

the highest price election (for the applicable coverage level) and multiplying the result (not to exceed 1.00) by the quantity of such production; or

(ii) For all other fresh stonefruit, multiplying the number of tons that could be marketed by the value per ton (for the applicable coverage level) and dividing that result by the highest price election available for that type.

#### 12. Late and Prevented Planting

The late and prevented planting provisions of the Basic Provisions (§457.8) are not applicable.

[63 FR 29935, June 2, 1998, as amended at 65 FR 47840, Aug. 4, 2000]

### §457.160 Processing tomato crop insurance provisions.

The Processing Tomato Crop Insurance Provisions for the 2005 and succeeding crop years are as follows:

#### FCIC Policies

UNITED STATES DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

#### Reinsured Policies

(Appropriate title for insurance provider)

Both FCIC and reinsured policies:

#### Processing Tomato Crop Provisions

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

#### 1. Definitions

*Acre.* 43,560 square feet of land on which row widths do not exceed 6 feet, or the land on which at least 7,260 linear feet rows are planted if row widths exceed 6 feet.

*Broker.* An enterprise in the business of buying and selling tomatoes possessing all the licenses and permits required by the state in which it operates, and that has a written contract with a processor to purchase processing tomatoes on behalf of the processor and to deliver such tomatoes to the processor.

*Bypassed acreage.* Land on which production is ready for harvest but the processor elects not to accept such production so it is not harvested.

*First fruit set.* The reproductive stage of the plant at which 30 percent of the plants have produced a fruit that has reached a minimum of one inch in diameter.

*Good Farming Practices.* In addition to the definition of "good farming practices" con-

tained in section 1 of the Basic Provisions, good farming practices include the cultural practices required under the processor contract.

*Harvest.* The severance of tomatoes from the vines.

*Plant stand.* The number of plants per acre considered to be normal for the applicable tomato variety and growing area.

*Planted acreage.*—In addition to the definition contained in the Basic Provisions, tomatoes must initially be placed in rows to be considered planted. Acreage planted in any other manner will not be insurable unless otherwise provided by the Special Provisions or by written agreement.

*Practical to replant.* In lieu of the definition of "Practical to replant" contained in section 1 of the Basic Provisions, practical to replant is defined as our determination, after loss or damage to the insured crop, based on factors, including but not limited to moisture availability, marketing window, condition of the field, and time to crop maturity, that replanting the insured crop will allow the crop to attain maturity prior to the calendar date for the end of the insurance period. It will not be considered practical to replant unless the replanted acreage can produce at least 75% of the approved yield, and the processor agrees in writing that it will accept the production from the replanted acreage.

*Processor.* Any business enterprise regularly engaged in processing tomatoes for human consumption, that possesses all licenses and permits for processing tomatoes required by the state in which it operates, and that possesses facilities, or has contractual access to such facilities, with enough equipment to accept and process contracted processing tomatoes within a reasonable amount of time after harvest.

*Processor Contract.* A written agreement between the producer and a processor, or between the producer and a broker, containing at a minimum:

(a) The producer's commitment to plant and grow processing tomatoes, and to deliver the tomato production to the processor or broker;

(b) The processor's, or broker's, commitment to purchase all the production stated in the processor contract; and

(c) A price per ton that will be paid for the production.

*Ton.* Two thousand (2,000) pounds avoirdupois.

#### 2. Unit Division

(a) Notwithstanding the provisions of this section or any unit division provisions contained in the Basic Provisions, no indemnity will be paid for any loss of production on any unit if the insured produced a crop sufficient to fulfill the processor contracts forming the basis for the guarantee, and any indemnity

will be limited to the amount necessary to compensate for loss in yield at the price elected between production to count and the contract requirements.

(b) In California only, in addition to, or instead of, establishing optional units by section, section equivalent or FSA farm serial number and by irrigated and non-irrigated acreage as provided in the unit division provisions contained in the Basic Provisions, optional units may be established if acreage planted to tomatoes is separated by a field that is not planted to tomatoes, or by a permanent boundary such as a permanent waterway, fence, public road or woodland. Such optional unit must consist of the minimum number of acres stated in the Special Provisions. Acreage planted to tomatoes that is less than the minimum number of acres required will attach to the closest unit within the section, section equivalent, or FSA farm serial number.

#### 3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities

In addition to the requirements of section 3 of the Basic Provisions:

(a) You may select only one price election for all the processing tomatoes in the county insured under this policy unless the Special Provisions provide different price elections by type. The percentage of the maximum price election you choose for one type will be applicable to all other types insured under this policy. For example, if you choose 100 percent of the maximum price election for one type, you must also choose 100 percent of the maximum price election for all other types.

(b) Liability under this policy will not exceed the number of tons required to be accepted by the processor under a processor contract in effect on or before:

(1) The earlier of August 20 or the date of damage to the insured crop in all counties with an acreage reporting date of July 15; or

(2) The earlier of the acreage reporting date or the date of damage in all other counties. (Exclude indemnities that occur in stage one and replant payments.)

(c) The price election used to determine the amount of an indemnity is progressive by stage and increases, at specified intervals, to the price used for final stage losses. Stages will be determined on an acre basis. The stages and applicable price elections are:

(1) First stage is from planting until first fruit set. If any acreage of the insured crop is destroyed in this stage, the price used to establish the amount of any indemnity owed for such acreage will be 50 percent of your price election;

(2) Second stage is from the first fruit set until harvest. If any acreage of the insured crop is destroyed in this stage, the price used to establish the amount of any indemnity

owed for such acreage will be 80 percent of your price election; and

(3) Third stage (final stage) is harvested acreage. The price election used in this stage to establish the amount of any indemnity owed will be 100 percent of your price election.

(d) Any acreage of tomatoes damaged to the extent, that the majority of producers in the area would not normally further care for the tomatoes, will be deemed to have been destroyed even though you may continue to care for it. The price election used to determine the amount of an indemnity will be that applicable to the stage in which the tomatoes were destroyed.

(e) The appraised production from bypassed acreage that could have been accepted by the processor will be included when determining your approved yield.

(f) Acreage that is bypassed because it was damaged by an insurable cause of loss to the extent that the processor cannot use the product will be considered to have a zero yield when determining your approved yield.

#### 4. Contract Changes

In accordance with section 4 of the Basic Provisions, the contract change date is August 31 preceding the cancellation date for California and November 30 preceding the cancellation date for all other states.

#### 5. Cancellation and Termination Dates

In accordance with section 2 of the Basic Provisions, the cancellation and termination dates are January 15 in California and March 15 in all other states.

#### 6. Report of Acreage

In addition to the provisions of section 6 of the Basic Provisions, you must provide a copy of all processor contracts to us on or before the acreage reporting date in all counties, unless otherwise specified in the Special Provisions.

#### 7. Annual Premium

In lieu of the premium amount determinations contained in section 7 of the Basic Provisions, the annual premium amount per acre is determined by multiplying the production guarantee per acre by the price election for the third (final) stage; by the premium rate; by the insured acreage; by the applicable share at the time of planting; and ultimately by any applicable premium adjustment factors contained in the actuarial documents.

#### 8. Insured Crop

(a) In accordance with section 8 of the Basic Provisions, the crop insured will be all the tomatoes in the county for which a premium rate is provided by the actuarial documents:

- (1) In which you have a share;
- (2) That are planted for harvest as processing tomatoes;
- (3) That are grown under, and in accordance with, the requirements of a processor contract executed on or before August 20 in all counties with an acreage reporting date of July 15, or on or before the acreage reporting date in all other counties, and are not excluded from the processor contract for or during the crop year; and
- (4) That are not (unless allowed by the Special Provisions or by written agreement):

- (i) Grown on acreage on which tomatoes were grown in either of the two previous years, except in California;
- (ii) Interplanted with another crop; or
- (iii) Planted into an established grass or legume.

(b) You will be considered to have a share in the insured crop if, under the processor contract, you retain control of the acreage on which the tomatoes are grown, you are at risk of loss, and the processor contract provides for delivery of processing tomatoes under specified conditions and at a stipulated price.

(c) A tomato producer who is also a processor or broker may establish an insurable interest if the following requirements are met:

- (1) The processor or broker, as applicable, must comply with these Crop Provisions;
- (2) Prior to the sales closing date, the Board of Directors or officers of the processor or the broker must execute and adopt a resolution that contains the same terms as an acceptable processor contract. (Such resolution will be considered a processor contract under this policy); and
- (3) As applicable, our inspection reveals that the processing facilities comply with the definition of a processor contained in these Crop Provisions.

#### 9. Insurable Acreage

In addition to the provisions of section 9 of the Basic Provisions:

(a) Any acreage of the insured crop that is damaged before the final planting date, to the extent that the majority of producers in the area would normally not further care for the crop, must be replanted unless we agree that it is not practical to replant; and

(b) We will not insure any acreage that does not meet the rotation requirements, if applicable, contained in the Special Provisions.

#### 10. Insurance Period

In lieu of the provisions contained in section 11 of the Basic Provisions, regarding the end of the insurance period, insurance ceases at the earlier of the date:

(a) You harvest sufficient production to fulfill your processor contract if the proc-

essor contract stipulates a specific amount of production to be delivered;

(b) The tomatoes should have been harvested but was not harvested;

(c) The tomatoes were abandoned;

(d) Harvest was completed;

(e) Final adjustment of a loss was completed; or

(f) The following calendar date for the end of the insurance period

(1) October 20 in California; and

(2) October 10 in all other states.

#### 11. Causes of Loss

In accordance with the provisions of section 12 of the Basic Provisions:

(a) Insurance is provided only against the following causes of loss that occur during the insurance period:

(1) Adverse weather conditions, including:

(i) Excessive moisture that prevents the harvesting equipment from entering the field or that prevents the timely operation of harvesting equipment; and

(ii) Abnormally hot or cold temperatures that cause an unexpected number of acres over a large producing area to be ready for harvest at the same time, affecting the timely harvest of a large number of such acres or the processing of such production being beyond the capacity of the processor, either of which causes the acreage to be bypassed;

(2) Fire;

(3) Insects, but not damage due to insufficient or improper application of pest control measures;

(4) Plant disease, but not damage due to insufficient or improper application of disease control measures;

(5) Wildlife;

(6) Earthquake;

(7) Volcanic eruption; or

(8) Failure of the irrigation water supply, if due to a cause of loss contained in sections 11(a)(1) through (7) that occurs during the insurance period.

(b) In addition to the causes of loss excluded by section 12 of the Basic Provisions, we will not insure against any loss of production due to:

(1) Acreage being bypassed, if the acreage is bypassed because:

(i) The breakdown or non-operation of equipment or facilities; or

(ii) The availability of a crop insurance payment. We may deny any indemnity immediately in such circumstance or, if an indemnity has been paid, require you to repay it to us with interest at any time acreage was bypassed due to the availability of a crop insurance payment;

(2) The processing tomatoes not being timely harvested, unless such delay in harvesting is solely and directly due to an insured cause of loss; or

(3) Your failure to follow the requirements contained in the processor contract.

# 12. Replanting Payment

(a) In accordance with section 13 of the Basic Provisions, a replanting payment is allowed if the crop sustained a loss exceeding 50 percent of the plant stand and it is practical to replant.

(b) The maximum amount of the replanting payment per acre will be determined as follows:

(1) The amount shown on the Special Provisions multiplied by your share; or

(2) If an amount is not contained in the Special Provisions, the lesser of 20 percent of the production guarantee or three tons, multiplied by your third stage (final) price election, multiplied by your share; and

(3) In no event will the replanting payment per acre exceed your actual cost of replanting.

# 13. Duties in the Event of Damage or Loss

In addition to the notice required by section 14 of the Basic Provisions, you must give us notice:

(a) Not later than 48 hours after:

(1) Total destruction of the tomatoes in the unit; or

(2) Discontinuance of harvest on a unit on which unharvested production remains;

(b) Within 3 days after the date harvest should have started on any acreage that will not be harvested. You must also provide acceptable documentation of the reason the acreage was bypassed. Failure to provide such documentation will result in our determination that the acreage was bypassed due to an uninsured cause of loss. If the crop will not be harvested and you wish to destroy the crop, you must leave representative samples of the unharvested crop for our inspection. The samples must be at least 10 feet wide and extend the entire length of each field in the unit. The samples must not be destroyed until the earlier of our inspection or 15 days after notice is given to us; and

(c) At least 15 days prior to the beginning of harvest if you intend to claim an indemnity on any unit, or immediately if damage is discovered during the 15 day period or during harvest, so that we may inspect the damaged production. If you fail to notify us and such failure results in our inability to inspect the damaged production, we will consider all such production to be undamaged and include it as production to count. You are not required to delay harvest.

# 14. Settlement of Claim

(a) We will determine your loss on a unit basis. In the event you are unable to provide separate acceptable production records:

(1) For any optional units, we will combine all optional units for which such production records were not provided; or

(2) For any basic units, we will allocate any commingled production to such units in

proportion to our liability on the harvested acreage for the units.

(b) In the event of loss or damage covered by this policy, we will settle your claim by:

(1) Multiplying the insured acreage by its respective production guarantee, by type if applicable;

(2) Multiplying each result of section 14(b)(1) by the respective price election, by type if applicable;

(3) Totaling the results of section 14(b)(2) if there are more than one type;

(4) Multiplying the total production to counted (see section 14(c)), for each type if applicable, by its respective price election;

(5) Totaling the results of section 14(b)(4) if there are more than one type;

(6) Subtracting the result of section 14(b)(4) from the result of section 14(b)(2) if there is only one type or subtracting the result of section 14(b)(5) from the result of section 14(b)(3) if there are more than one type; and

(7) Multiplying the result of section 14(b)(6) by your share.

For example:

You have a 100 percent share in 50 acres of type A processing tomatoes in the unit, with a guarantee of 18.8 tons per acre and a price election of \$50.00 per ton. You are only able to harvest 10.0 tons. Your indemnity would be calculated as follows:

(1) 50.0 acres × 18.8 tons = 940.0 tons guarantee;

(2) 940.0 tons × \$50.00 price election = \$47,000.00 value guarantee;

(4) 10.0 tons × \$50.00 price election = \$500.00 value of production to count;

(6) \$47,000.00 – \$500.00 = \$46,500.00 loss; and

(7) \$46,500 × 100 percent = \$46,500.00 indemnity payment.

You also have a 100 percent share in 50 acres of type B processing tomatoes in the same unit, with a guarantee of 15.0 tons per acre and a price election of \$35.00 per ton. You are only able to harvest 5.0 tons. Your total indemnity for both types A and B would be calculated as follows:

(1) 50.0 acres × 18.8 tons = 940.0 ton guarantee for type A and 50.0 acres × 15.0 tons = 750.0 ton guarantee for type B;

(2) 940.0 ton guarantee × \$50.00 price election = \$47,000.00 value of guarantee for type A and 750.0 ton guarantee × \$35.00 = \$26,500.00 value of guarantee for type B;

(3) \$47,000.00 + \$26,500.00 = \$73,500.00 total value of guarantee;

(4) 10.0 tons × \$50.00 price election = \$500.00 value of production to count for type A and 5.0 tons × \$35.00 price election = \$175.00 value of production to count for type B;

(5) \$500.00 + \$175.00 = \$675.00 total value of production to count;

(6) \$73,500.00 – \$675.00 = \$72,825.00 loss; and

(7) \$72,825 loss × 100 percent = \$72,825.00 indemnity payment.

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(c) The total production to count, specified in tons, from all insurable acreage on the unit will include:

(1) All appraised production as follows:

(i) Not less than the production guarantee for acreage:

(A) That is abandoned;

(B) Put to another use without our consent;

(C) That is damaged solely by uninsured causes; or

(D) For which you fail to provide production records that are acceptable to us.

(ii) Production lost due to uninsured causes;

(iii) Production on acreage that is bypassed unless the acreage was bypassed due to an insured cause of loss which resulted in production which would not be acceptable under the terms of the processor contract;

(iv) Potential production on insured acreage that you intend to put to another use or abandoned, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end when you put the acreage to another use or abandon the crop. If agreement on the appraised amount of production is not reached:

(A) If you do not elect to continue to care for the crop, we may give you consent to put the acreage to another use if you agree to leave intact, and provide sufficient care for, representative samples of the crop in locations acceptable to us, (The amount of production to count for such acreage will be based on the harvested production or appraisals from the samples at the time harvest should have occurred. If you do not leave the required samples intact, or you fail to provide sufficient care for the samples, our appraisal made prior to giving you consent to put the acreage to another use will be used to determine the amount of production to count); or

(B) If you elect to continue to care for the crop, the amount of production to count for the acreage will be the harvested production, or our reappraisal if additional damage occurs and the crop is not harvested;

(2) All harvested production (in tons) delivered to the processor which meets the quality requirements of the processor contract (expressed as usable or payable weight).

(3) All harvested tomato production delivered to processor which does not meet the quality requirements of the processor contract due to not being timely delivered.

(d) Once harvest has begun on any acreage covered by a processor contract that specifies the number of tons to be delivered, the total indemnity payable will be limited to an amount based on the lesser of the guaranteed tons, or the tons remaining unfulfilled under the processor contract.

### 15. Late and Prevented Planting

The late and prevented planting provisions of the Basic Provisions are not applicable.

[62 FR 54342, Oct. 20, 1997, as amended at 62 FR 65177, Dec. 10, 1997; 69 FR 44576, July 27, 2004]

### §457.161 Canola and rapeseed crop insurance provisions.

The canola and rapeseed crop insurance provisions for the 2003 and succeeding crop years are as follows:

FCIC policies:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

*Reinsured Policies*

(Appropriate title for insurance provider)

Both FCIC and reinsured policies:

*Canola and Rapeseed Crop Provisions*

If a conflict exists among the policy provisions, the order of priority is as follows: (1) the Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions, with (1) controlling (2), etc.

#### 1. Definitions

*Canola.* A crop of the genus *Brassica* as defined in accordance with the Official United States Standards for Grain—Subpart C—U.S. Standards for Canola.

*Harvest.* Combining or threshing for seed. A crop that is swathed prior to combining is not considered harvested.

*Local market price (Canola).* The cash price per pound for U.S. No. 2 grade canola that reflects the maximum limits of quality deficiencies allowable for the U.S. No. 2 grade canola.

*Planted acreage.* In addition to the definition contained in the Basic Provisions, land on which seed is initially spread onto the soil surface by any method and subsequently is mechanically incorporated into the soil in a timely manner and at the proper depth will be considered planted. Acreage planted in any other manner will not be insurable unless otherwise provided by the Special Provisions, actuarial documents, or by written agreement.

*Price of damaged production.* The cash price per pound available if the production were sold for canola that qualifies for quality adjustment in accordance with section 12 of these crop provisions.

*Rapeseed.* A crop of the genus *Brassica* that contains at least 30 percent of an industrial type of oil as shown on the Special Provisions and that is measured on a basis free from foreign material.